

Roger G. Perkins, Esq., 86617
Carolyn Taylor, Esq., SBN 159347
Michelle L. Bains, Esq., SBN 335966
CLARK HILL, LLP
One American Plaza
600 West Broadway, Ste 500
San Diego, CCA 92101
Telephone (619) 819-2411
Facsimile (619) 557-0460
rperkins@clarkhill.com
ctaylor@clarkhill.com
mbains@clarkhill.com

Ernest F. Koschineg, Esq.*
Jill Fertel, Esq.*
Antima Chakraborty, Esq.*
CIPRIANI & WERNER
450 Sentry Parkway Suite 200
Blue Bell, Pennsylvania 19422
Telephone: (610) 567-0700
Facsimile: (610) 567-0712
ekoschineg@c-wlaw.com
jfertel@c-wlaw.com
achakraborty@c-wlaw.com
*pro hac vice forthcoming

Attorneys for Defendant

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

NATALIE NICHOLSON, : Case No.:
individually and on behalf of all others :
similarly situated,
Plaintiffs, : Superior Court of Los Angeles County
v. : Case No. 23-ST-CV-05512
: **NOTICE OF REMOVAL:**
NONSTOP ADMINISTRATION :
AND INSURANCE SERVICES, INC.: **28 U.S.C. §§ 1332 and 1441(b);**
inclusive, : **DIVERSITY JURISDICTION)**
Defendant. :

NOTICE OF REMOVAL

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant, Nonstop Administration and Insurance Services, Inc., (hereinafter “Nonstop”), a California Corporation, hereby removes this action from the Superior Court of Los Angeles County in the State of California to the United States District Court for the Northern District of California San Francisco pursuant to 28 U.S.C. §§ 1332 and 1441(b), Federal Rules of Civil Procedure 81(c), and avers as follows:

I. DESCRIPTION OF ACTION

Plaintiff, Natalie Nicholson, individually and on behalf of all similarly situated persons, filed her Class Action Complaint in the Superior Court of Los Angeles, California, on March 13, 2023, captioned *Natalie Nicholson, individually and on behalf of all others similarly situated v. Nonstop Administration and Insurance Serv., Inc.*, 23-ST-cv-05512. A copy of the Complaint is attached to this Notice of Removal as **Exhibit A**.

Plaintiff’s Complaint asserts causes of actions purportedly arising from a data breach that occurred on or about December 22, 2022—the *same data breach incident* underlying *John Prutsman, et al v. Nonstop Administration and Insurance Services, Inc.*, Case No. 3:23-cv-01131-VC, now pending in the United States District Court for the Northern District of California. A true and correct copy of the *Prutsman* Consolidated Class Action Complaint (“CAC”) is attached hereto as **Exhibit B**.

Plaintiff alleges that she, and similarly situated individuals, experienced damages as a result of a third-party data breach. *See Exhibit A ¶¶ 2-4.* Plaintiff has raised several causes of action, including Violation of the California Customer Protection Act, Violation of the California Unfair Competition Law, and Breach of Contract. Nonstop denies the allegations underlying Plaintiff's claims.

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1 This action is removable under 28 U.S.C. §§ 1441 (a) and 1453. 28 U.S.C.
 2 §§ 1441 (a) provides for the removal of state court civil actions over which U.S.
 3 District Courts have original jurisdiction. This Court has original over this case
 4 under 28 U.S.C. § 1332(d)(2) because this is a class action in which the proposed
 5 class includes at least 100 members; the amount in controversy exceeds \$5,000,000,
 6 exclusive of interests and costs; and minimal diversity exists. As such, this action
 7 is removable pursuant to 28 U.S.C. § 1453, which provides that a class action may
 8 be removed to federal court in accordance with 28 U.S.C. § 1446.

9 **II. TIMELINESS & TECHNICAL REQUIREMENTS OF**
 10 **REMOVAL**

11 Counsel for Nonstop accepted service of Plaintiff's Complaint on June 20,
 12 2023. *See Acknowledgment of Receipt*, attached hereto as **Exhibit C**. 28 U.S.C. §
 13 1446(b)(1). Accordingly, this Removal is timely. This Notice is being filed in the
 14 Northern District per the direction of Judge Chhabria's minute entry on May 4,
 15 2023." *See Docket and Minute Entry No. 25, attached as Exhibit D.*

16 **III. REMOVAL BASED ON DIVERSITY JURISDICTION**

17 **A. Minimum Diversity Exists in this Matter**

18 Generally, "diversity jurisdiction does not exist unless each defendant is a
 19 citizen of a different State from each plaintiff." *Korn v. Polo Ralph Lauren Corp.*,
 20 536 F.Supp.2d 1199, 1201 (E.D. Cal. 2008). However, a class action requires
 21 minimum, rather than complete diversity. Pursuant to the Class Action Fairness Act
 22 ("CAFA"), a district court enjoys subject matter jurisdiction in a class action in
 23 which the class: (1) includes at least 100 members; (2) features an amount in
 24 controversy in excess of five million dollars; and (3) demonstrates minimal
 25 diversity- diversity of citizenship between at least one defendant and one plaintiff-
 26 class member, exists. *Id.*

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1 A corporation is a citizen of both the state in which it is incorporated and the
 2 state in which its principal place of business is located. See 28 U.S.C. § 1332(c).
 3 Nonstop is a California corporation with its principal place of business located at
 4 1800 Sutter Street, Suite 730, in Concord, California. Nonstop need only show
 5 diversity of any one plaintiff-class member in order to support a finding of
 6 minimum diversity. *See Ehrman v. Cox Communications, Inc.*, (932 F.3d 1223,
 7 1226 (9th Cir. 2019).

8 As evidence of residency of other class members, this Court may look to
 9 many of the named plaintiffs in the *Prutsman* matter: Plaintiff John Prutsman, is a
 10 resident of Pagaso Springs, Colorado. *See Exhibit B at ¶ 14.* Plaintiff, Amira Martz,
 11 is a resident of Wasilla, Alaska. *See Id. at ¶ 20.* Plaintiff, Simcha Ringel, is a resident
 12 of Brooklyn, New York. *See Id. at ¶ 24.* Plaintiff, David Klein, is a resident of
 13 Chappaqua, New York. *See Id. at ¶ 35.* Minimal diversity is therefore satisfied.

14 **B. The Proposed Class Exceeds 100 Individuals**

15 Removal of a class action requires a showing that the proposed class exceeds
 16 100 members. *See 28 U.S.C.A. 1332(d)(5)(B).* Plaintiff's Complaint identifies the
 17 class as, "The class members are so numerous and geographically dispersed
 18 throughout California that joinder of all class members would be impracticable.
 19 While Plaintiff does not submit the precise number of members of the proposed
 20 Class, she suggests that it "consists of tens of thousands of individuals in California,
 21 including Plaintiff and the Class members." Exhibit A, ¶ 49. "Allegations made in
 22 a complaint are accepted as true for purposes of removal." *Korn v. Polo Ralph
 23 Lauren Corp.*, 536 F.Supp.2d 1199, 1205. A complaint need not set forth the precise
 24 number of class members to satisfy the requirements of CAFA. *See Id. See also Ko*
v. Natura Pet Prod., Inc., No. C 09-02619 JF, 2009 WL 10695886, at *2 (N.D. Cal.
 25 Sept. 28, 2009). Thus, the proposed class likely exceeds 100 members.

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1 **C. The Amount in Controversy Exceeds \$5,000,000**

2 Pursuant to CAFA, a class action is removable if the aggregate sum of the
 3 class claims meets or exceeds the sum of \$5,000,000, exclusive of interest and costs.
 4 *See* 28 U.S.C.A. § 1332(d)(2). A notice of removal must include only a plausible
 5 allegation that the amount in controversy exceeds the jurisdictional threshold. “In
 6 measuring the amount in controversy, a court must assume that the allegations of
 7 the complaint are true and that a jury will return a verdict for the plaintiff on all
 8 claims made in the complaint.” *Korn*, 536 F.Supp.2d 1199, 1205. “The ultimate
 9 inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what
 10 a defendant will actually owe.” *Id.* at 1205; *see Rippee v. Boston Market Corp.*, 408
 11 F.Supp.2d 982, 986 (S.D. Cal. 2005); *Scherer v. Equitable Life Assurance Society*
 12 *of the United States*, 347 F.3d 394, 399 (2d Cir. 2003).

13 Where the complaint does not specify the amount of damages sought, the
 14 removing defendant must prove by a preponderance of the evidence that the amount
 15 in controversy requirement has been met. *Abrego*, 443 F.3d 676, 683; *Sanchez v.*
 16 *Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). Further, in analyzing
 17 the amount in controversy issue, a court may consider supplemental evidence that
 18 was not submitted at the time of the removal notice but was submitted in connection
 19 with the opposition to a remand motion. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840
 20 n. 1 (9th Cir. 2002).

21 First, Plaintiff Nicholson’s Complaint puts the amount of controversy at an
 22 amount where removal is appropriate. In her Complaint, she states, “...based on
 23 information and belief, the Class consists of tens of thousands of Defendant
 24 individuals in California, including Plaintiff and the Class members.” Exhibit A, ¶
 25 49. Plaintiff goes on to claim that an alleged fair value of PII may range anywhere
 26 from \$210 to \$388 per record. *See* Exhibit A, ¶ 43. While Nonstop challenges the
 27 merits of the value, as mentioned, for purposes of removal, a court must assume
 28 that the allegations of the complaint are true. *See Korn* at 1205. “The ultimate

1 inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what
2 a defendant will actually owe.” *Id., supra.*

3 Additionally, when looking at supplemental evidence, including the
4 *Prutsman* CAC, the amount of controversy claimed is in excess of \$5 million. CAC
5 ¶ 10. The amount in controversy therefore clearly exceeds the jurisdictional
6 requirement of CAFA.

7 **IV. NOTICE TO ADVERSE PARTIES AND THE SUPERIOR**
8 **COURT**

9 Promptly after filing this Notice, Nonstop will provide written notice of
10 removal to Plaintiff and the Superior Court and will file a copy of this Notice of
11 Removal with the Clerk of the District Court within and for Los Angeles County.
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13 Dated: July 18, 2023
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15 Respectfully submitted,
16 **CLARK HILL, LLP**
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19 Roger G. Perkins, Esq.
20 Carolyn Taylor, Esq.
21 Michelle L. Bains, Esq.
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23 **CIPRIANI & WERNER**
24 Ernest F. Koschineg, Esq.*
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28

29 *Attorneys for Defendant*